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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
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In re: **CONGREGATION ACHPRETVIA TAL CHAIM SHAR HAYUSHOR, INC.,** Debtor.	Chapter 11 16-10092-mew

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DEBTOR'S MOTION FOR ENTRY OF ORDER FURTHER EXTENDING EXCLUSIVE RIGHT TO (I) FILE A PLAN OF REORGANIZATION AND (II) SOLICIT ACCEPTANCES WITH RESPECT THERETO AND FOR RELATED RELIEF

TO THE HONORABLE MICHAEL E. WILES,
UNITED STATES BANKRUPTCY JUDGE:

The debtor and debtor in possession, Congregation Achpretvia Tal Chaim Shar Hayushor, Inc. (the "Debtor"), by its attorneys, seeks the entry of an order, substantially in the form annexed to this motion as **Exhibit A**, pursuant to Section 1121 of title 11 of the United States Code, as amended (the "Bankruptcy Code"), extending the time within which the Debtor has the exclusive right to file a plan of reorganization and to solicit acceptances with respect thereto for 120 days through and including January 11, 2017 and March 10, 2017, respectively. In support thereof, the Debtor states:

JURISDICTION AND VENUE

1. Jurisdiction over this motion is vested in the United States District Court for this District pursuant to 28 U.S.C. § 1334.

2. This motion has been referred to this Court for consideration pursuant to Section 157 of the Judicial Code and the *Standing Order of Reference Regarding Title 11* (S.D.N.Y. Feb 1, 2012) (Preska, C.J.).

3. This is a core proceeding arising under title 11 of the United States Code. See 28 U.S.C. § 157(b)(1). The statutory predicate for the relief sought is Section 1121 of the Bankruptcy Code.

4. Venue of this civil proceeding in this district is proper pursuant to 28 U.S.C § 1409.

BACKGROUND

5. On January 15, 2016 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the "Court"). No trustee, examiner or committee has been appointed in Debtor's Chapter 11 case.

6. The Debtor, a religious and not for profit corporation, owns the real property and improvements located at 163 East 69th Street, New York, New York (Block 1404, Lot 31) (the "Property"). On November 10, 2015, 163 East 69 Realty LLC ("163 East 69 Realty") commenced an action relating to a contract for the sale of the Property (the "Prepetition Contract") against the Congregation (the "State Court Action") seeking specific performance directing the Congregation to commence an action in the Supreme Court of the State of New

York ("Supreme Court") for authorization from the Supreme Court and the New York State Attorney General to sell the Property pursuant to the Prepetition Contract. As of the commencement of the State Court Action, the Prepetition Contract was neither approved by the Supreme Court nor by the Office of the New York State Attorney General.

7. On March 17, 2016, 163 East 69 Realty filed a motion seeking entry of an order dismissing this chapter 11 case (the "Motion to Dismiss").

RELIEF REQUESTED

8. Pursuant to section 1121(b) of the Bankruptcy Code, the Debtor has the exclusive right to file a plan of reorganization during the first 120 days following the Petition Date (the "Exclusivity Period"). In addition, pursuant to Section 1121(c)(3) of the Bankruptcy Code, the Debtor is given the exclusive right to solicit acceptances to any plan filed during the Exclusivity Period for one hundred eighty (180) days following the Petition Date (the "Acceptance Period," together with the Exclusivity Period, the "Exclusive Periods"). Pursuant to Section 1121(d) of the Bankruptcy Code, this Court may extend the Exclusive Periods.

9. The current Exclusivity Period and Acceptance Period expire on September 13, 2016 and November 10, 2016, respectively. The filing of a motion pursuant to Section 1121(d) prior to the expiration of the Exclusive Periods tolls the deadline pending resolution of such motion. See 11 U.S.C. § 1121(d)(1) ("[s]ubject to paragraph (2) on request of a party in interest made *within* the respective periods specified in subsections (b) and (c) of this section . . . the court may for cause reduce or increase the 120 day period or the 180 day period referred to in this section.") (emphasis added).

10. This is the Debtor's second request for an extension of the Exclusive Periods.

The Debtor seeks the entry of an order: (i) extending the Exclusivity Period for 120 days to and including January 11, 2017, and (ii) extending the Acceptance Period for 120 days to and including March 10, 2017 to ensure that this Court, the Debtor and other parties in interest are not distracted by the filing of any competing or premature plans.

11. The Debtor submits that the requested extensions of the Exclusive Periods should be granted so that it will have sufficient time to formulate and confirm a plan.

CAUSE EXISTS FOR AN EXTENSION OF THE EXCLUSIVE PERIODS

12. The Debtor's Exclusive Periods may be extended by this Court for "cause" pursuant to Section 1121(d) of the Bankruptcy Code.

13. The moving party bears the burden of establishing that cause exists for an extension of exclusivity under Section 1121(d) of the Bankruptcy Code. In re Texaco, Inc., 76 B.R. 322, 326 (Bankr. S.D.N.Y., 1987). Whether cause exists to extend a debtor's exclusive period is a decision committed to the sound discretion of the bankruptcy court based upon the facts and circumstances of each particular case. See, e.g., In re Adelphia Commc'ns Corp., 352 B.R. 578, 586 (Bankr. S.D.N.Y. 2006), First American Bank of New York v. Southwest Gloves and Safety Equipment, Inc., 64 B.R. 963, 965 (D. Del. 1986); Texaco, 76 B.R. at 325; In re Reetz, 61 B.R. 412, 414 (Bankr. W.D. Wis. 1987); In re Tony Downs Foods Co., 34 B.R. 405, 407 (Bankr. D. Minn. 1983). Bankruptcy courts exercise broad flexibility in making such determinations. *See*, H.R. Rep. No. 595, 95th Cong., 2d Sess. 232 (1978); See also In re Perkins, 71 B.R. 294 (W.D. Tenn. 1987) ("The hallmark of [Section 1121(d)] is flexibility").

14. Bankruptcy courts generally focus on nine factors to determine whether a motion to extend exclusivity pursuant to 11 U.S.C. § 1121(d) should be granted:

(a) the size and complexity of the case;
(b) the necessity for sufficient time to permit the debtor to negotiate a plan of reorganization and prepare adequate information;
(c) the existence of good faith progress toward reorganization;
(d) the fact that the debtor is paying its bills as they become due;
(e) whether the debtor has demonstrated reasonable prospects for filing a viable plan;
(f) whether the debtor has made progress in negotiations with its creditors;
(g) the amount of time which has elapsed in the case;
(h) whether the debtor is seeking an extension of exclusivity in order to pressure creditors to submit to the debtor's reorganization demands; and
(i) whether an unresolved contingency exists.

In re Adelphia 352 B.R. at 857.

15. This Court should be cognizant that this is only the Debtor's second request for an extension of its Exclusive Periods. The Debtor submits that the factors militate towards granting the relief requested.

16. Since the Debtor's filing, the Debtor has been focused on defending itself against 163 East 69 Realty and preserving the Property for the Debtor's estate and its creditors. To that end, the Debtor removed the State Court Action to this Court to have this Court make a determination as to whether the Prepetition Contract is valid or can be rescinded. In response, 163 East 69 Realty filed the Motion to Dismiss seeking to dismiss the Debtor's chapter 11 case, or in the alternative, abstain from hearing the State Court Action and have it remanded to the Supreme Court.

17. After additional motion practice and the exchange of discovery, the Debtor and 163 East 69 Realty determined it was in their best interests to seek a settlement of the Motion to Dismiss rather than continue with an evidentiary hearing in front of this Court. Immediately prior to the July 27, 2016 evidentiary hearing, the Debtor and 163 East 69 Realty agreed in principle to resolve the Motion to Dismiss by remanding the State Court Action to the Supreme

Court to determine the validity of the Prepetition Contract or, in the alternative, to seek a determination from the Attorney General as to whether the Prepetition Contract is valid. Counsel to the Debtor and counsel to 163 East 69 Realty are still in the process of documenting the settlement and once the settlement is finalized, the parties will present the settlement to the Court for approval.

18. Additionally, the Debtor is also seeking postpetition financing to funds its operations, which include, insurance for the Property, maintenance costs associated with the Property, other administrative costs, and funds to be available to pay creditors upon the eventual confirmation of a plan. The Debtor is currently in negotiations with several lenders to determine the best source of financing. Once the financing is secured, the Debtor will file a motion seeking Court approval of the proposed financing.

19. Accordingly, the Debtor submits that it has made significant progress in its bankruptcy case. Upon a determination of the Prepetition Contract, whether from the Supreme Court or the Attorney General, the Debtor will then be in a position to determine its reorganization possibilities. However, until then, and given the facts and circumstances in this case, good cause exists to extend the Exclusive Periods to provide the Debtor with sufficient time to formulate a plan. The Debtor believes that the requested extensions will promote the orderly reorganization of the Debtor without the need to devote unnecessary time, money and energy to defending against or responding to a competing plan.

20. The Debtor has served this motion on the Office of the United States Trustee, the holders of twenty largest unsecured claims, counsel to 163 East 69 Realty, counsel to the

Debtor's secured creditors, and all parties who have filed notices of appearance in this case. The Debtor submits that such service be deemed appropriate and sufficient under the circumstances.

WHEREFORE, the Debtor respectfully requests that this Court grant the relief sought in this motion and enter an order pursuant to Sections 1121(b), (c)(3) and (d) of the Bankruptcy Code: (i) extending the Debtor's exclusive right to file a plan of reorganization to and including **January 11, 2017;** (ii) and in the event that the Debtor files a plan of reorganization prior to **January 11, 2017,** further extending the Debtor's right to solicit acceptances with respect thereto to and including **March 10, 2016**; and (iii) granting to the Debtor such other and further relief as may be just and appropriate.

Dated: New York, New York
September 8, 2016

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By: /s/ A. Mitchell Greene
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EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
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In re:

CONGREGATION ACHPRETVIA TAL CHAIM SHAR HAYUSHOR, INC.,

Debtor.

---X

Chapter 11

16-10092-mew

ORDER EXTENDING EXCLUSIVE RIGHT TO (I) FILE A PLAN OF REORGANIZATION AND (II) SOLICIT ACCEPTANCES WITH RESPECT THERETO AND FOR RELATED RELIEF

UPON the motion dated September 8, 2016 (the "Motion") of **Congregation Achpretvia Tal Chaim Shar Hayushor, Inc.** (the "Debtor") seeking the entry of an order pursuant to section 1121 of Title 11 of the United States Code (the "Bankruptcy Code"): (i) extending the Debtor's exclusive right to file a plan of reorganization through and including **January 11, 2017;** and (ii) in the event that the Debtor files a plan of reorganization on or prior to that date, extending the Debtor's right to solicit acceptances with respect thereto through and including **March 10, 2017**; and there being due and sufficient notice of the Motion; and it appearing that due and sufficient cause appearing therefor, it is

ORDERED, that the Motion is granted as set forth herein; and it is further

ORDERED, that the Debtor's exclusive right to file a plan of reorganization pursuant to Section 1121 of the Bankruptcy Code is extended through and including **January 11, 2017** (the "Exclusivity Period"); and it is further

ORDERED, that in the event that the Debtor files a plan of reorganization within the time set forth in the preceding paragraph, then the Debtor's exclusive right to solicit acceptances with respect thereto pursuant to §1121(c)(3) of the Bankruptcy Code is extended to **March 10, 2017** (the "Acceptance Period"); and it is further

ORDERED, that the entry of this order is without prejudice to the Debtor's right to seek additional extensions of the Exclusivity Period and Acceptance Period pursuant to §1121 of the Bankruptcy Code.

DATED: New York, New York
__________________, 2016

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HONORABLE MICHAEL E. WILES
UNITED STATES BANKRUPTCY JUDGE